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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,268	07/07/2003	David H. McFadden	54330/322596	7748
23370	7590	05/30/2007		
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER COCKS, JOSIAH C	
			ART UNIT 3749	PAPER NUMBER
			MAIL DATE 05/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/614,268

Applicant(s)

MCFADDEN, DAVID H.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/19/2006.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings filed on July 10, 2004 are accepted by the examiner.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on May 19, 2006 has been considered by the examiner.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claim 1** is rejected under 35 U.S.C. 102(b) as being anticipated by **U.S. Patent No. 4,409,453 to Smith** ("Smith").

Smith discloses in the specification and figures 1-18 an invention in the same field of endeavor as applicant's invention and as described in applicant's claim 1.

In particular, in regard to at least claim 1, Smith shows a speed cooking oven (1) for cooking a food product by hot gas comprising:

(a) a housing defining a cooking chamber (79) having a top wall (2), bottom wall (8), right side wall (6), left side wall (4) and back wall (10);

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(b) a conduit means (at least plenum 35 and upper and lower chambers bounded by plates 82, 83) associated with the cooking chamber (79), said conduit means providing for the circulation of the gas to and from the cooking chamber (see Figs. 2 and 3);

(c) flow means (30) for causing circulation of the gas (see col. 6, lines 4-8);

(d) a thermal means (50) for heating the gas;

(e) a control means (24-28) for controlling the gas (see col. 5, lines 63-67);

(f) a first gas directing means associated with the conduit means and disposed above the food product (see at least the central upper jet 81 in Fig. 6, which is produced from a tube 90 as shown in Fig. 2 or see the middle tube 126 producing jet 81b of Fig. 8);

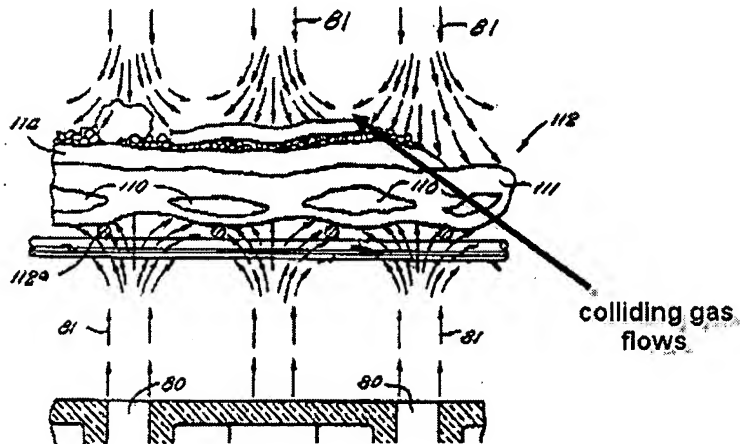
(g) a second gas directing means disposed above the food product (see at least the rightmost jet 81 in Fig. 6, which is produced from a tube 90 as shown in Fig. 2 or see the right most tube 126 producing jet 81c in Fig. 8);

In regard to the recitations that the first and second gas directing means are configured to cause gas from these means to collide upon the upper surface of the food product, these recitations are considered present in Smith. Specifically, in describing Fig. 8, Smith notes that the high velocity jets (81) impinge upon the surface of a food product (P) “to provide very rapid heat transfer and very rapid water vapor removal from the surface of the product.” (Smith, col. 10, lines 45-51). Further, Smith also describes that the jets (81) after striking a solid surface are “transformed into a turbulent mushroom shaped pressure area” (see col. 1, lines 6-10). The examiner considers that the above noted descriptions suggest that the gas jets from the gas directing means in either Fig. 6 (unshown tubes 90) or Fig. 8 (upper tubes 126) noted above collide with one another as

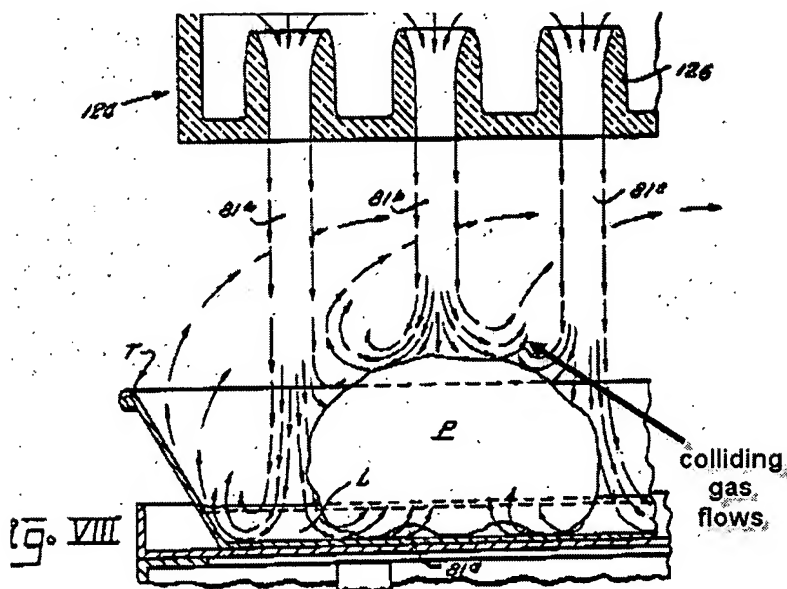
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described. The following are segments of Fig. 6 and Fig. 8 to further illustrate what the examiner considers to be the colliding flows.

Segment of Fig. 6 of Smith (the examiner has added the lead arrow and "colliding gas flows" text)



Segment of Fig. 8 of Smith (the examiner has added the lead arrow and "colliding gas flows" text)



Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. **Claim 1** is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of **U.S. Patent No. 6,874,495**. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of this application is broader in scope but claiming the same invention as claim 3 of U.S. Patent No. 6,874,495.

7. **Claim 1** is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of **U.S. Patent No. 7,055,518**. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of this application is broader in scope but claiming the same invention as claims 1-3 of U.S. Patent No. 7,055,518.

8. **Claim 1** is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of copending **Application No. 11/098,280**. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of this application is broader in scope but claiming the same invention as claim 4 of application 11/098,280.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

9. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37

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CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874.

The examiner can normally be reached on M-F 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Rinehart, can be reached on (571) 272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc
May 25, 2007


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749